

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

DECISION OF THE BOARD

*In the Matter of the Claim for Refund under the Sales and Use Tax Law of*  
VARIAN ASSOCIATES *Claimant*

*Appearances:*

*For Claimant:*

Joseph A. Vinatieri  
Attorney

Douglas Burns  
Sales Tax Manager

*For Business Taxes*

*Appeals Review Section:*

Donald J. Hennessy  
Assistant Chief Counsel

*For Sales and Use*

*Tax Department:*

G. A. Bystrom  
Principal Tax Auditor

Ronald Dick  
Senior Staff Counsel

This Decision deals with a claim for refund of sales taxes paid with respect to sales of linear accelerators which were ultimately shipped to points outside California. The taxes were paid pursuant to an audit covering the period from January 1, 1981 through March 31, 1984. The Board heard and granted this claim at the regular meeting of the Board on October 26, 1993 in Sacramento, California.

Claimant entered into written contracts which required claimant to deliver the accelerators to points outside California. As to the sales in question, the customers were not ready to receive the accelerators when claimant completed the manufacture. Prior to shipment to points outside California, claimant, with the concurrence of its customers, shipped the accelerators to a storage location in California. Storage was at a third party warehouse which made a charge to claimant for the storage space. Claimant was reimbursed for storage charges by claimant's customers. Claimant did, in fact, ultimately ship the accelerators to points outside California via common carrier.

At issue is whether claimant's obligation to ship the accelerators outside California remained in effect after claimant and the customers agreed to the shipment of the accelerators to the California storage site, particularly in view of documentation stating that shipment to the storage site constituted shipment by claimant for contractual

purposes. The Board found that claimant had an ongoing contractual obligation to deliver the property to points outside California after the storage. This ongoing obligation was sufficient to allow claimant to claim exemption for these sales pursuant to Revenue and Taxation Code section 6396, and subdivision (a)(3)(B) of Sales and Use Tax Regulation 1620 which provides in pertinent part:

“Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer . . .”

The Sales and Use Tax Department argued that the agreements between claimant and the customers to ship the accelerators to the storage site in California relieved claimant from any further obligation to ship the equipment outside California. The Board concluded that, although title and risk of loss to the accelerators passed to the customers on shipment to the storage location, claimant was still contractually obligated to ship the accelerators outside California. The factors upon which the Board relied in reaching this conclusion included:

1. The accelerators were ultimately shipped outside California by claimant.
2. The original contracts required claimant to ship the accelerators outside California.
3. The customer was obligated to pay for all shipping costs.
4. Claimant paid for the first 60 days of storage.
5. Claimant was responsible for the selection of the storage facility.
6. Claimant periodically inspected and performed required maintenance on the accelerators in storage.
7. The customers would not ordinarily know the location of the storage facility.

Adopted at Sacramento, California, this 30th day of June, 1994.

Matthew K. Fong, Member  
Ernest J. Dronenburg, Jr., Member  
Windie Scott, Member

Attested by: E. L. Sorensen, Jr. for Executive Director